

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

W.P. No. 440 of 2003

AND

W.P. No. 441 of 2003

AND

W.P. No. 1620 of 2003

Date of decision: 15 October, 2003

For the approval of:

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice Rajesh Tandon.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)
- Whether the reporters be allowed to see the judgment? (Yes)

(Gurpreet)
P.A.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 440 of 2003

Dr. Manoj Upreti and others	----	Petitioners
	Vs.	
State of Uttaranchal and others	---	Respondents

Mr. Manoj Tiwari, learned Advocate for the Petitioners.
Mr. K.P. Upadhyaya, learned Standing Counsel for the State.
Mr. A. Rab, learned Advocate for respondent No. 13.
Mr. Paresh Tripathi, i/b Mr. Rajendra Dobhal, learned Advocate for the respondent No. 10 & 11
Mr. B.S. Verma, learned Standing Counsel for the State of U.P.

AND

W.P. No. 441 of 2003

Dr. Kamlesh Chandra Bhatt	---	Petitioner
	Vs.	
State of Uttaranchal and others	---	Respondents

Mr. Manoj Tiwari, learned Advocate for the Petitioners.
Mr. A. Rab, learned Advocate for respondent No. 14.
Mr. Rajendra Dobhal, learned Advocate for the respondent No. 11 & 15

AND

W.P. No. 1620 of 2003

Dr. Bipin Pant and others	---	Petitioners
	Vs.	
State of U.P. and others	---	Respondents

Mr. Manoj Tiwari, learned Advocate for the Petitioners.
Mr. B.S. Verma, learned Standing Counsel for the State of U.P.

Coram: Hon. S.H. Kapadia, C.J.
Hon. Rajesh Tandon, J.

Date: 15th October 2003

ORAL JUDGMENT: (Hon'ble S.H. Kapadia, C.J.)

1. This batch of Writ Petitions seek to challenge the validity of Government Order dtd 31st July 2003 by which the Government has nominated 16 In-Service Government doctors for Post Graduate

Diploma Course conducted by Government Medical Colleges of U.P. By U.P. Government Order dtd 31st July 2003, 16 seats in Post Graduate Diploma Courses conducted by Government Medical Colleges of U.P. have been allotted for Medical Officers of Uttaranchal cadre and it is pursuant to this allotment of 16 seats that the State of Uttaranchal has issued the Government Order dated 31st July 2003 nominating 16 candidates. Petitioners have not been nominated. For the sake of clarity, we are reproducing the facts in Writ Petition No. 440 of 2003. Since, all the three Writ Petitions raise common question of law and fact. They are disposed of by this common judgment.

2. **FACTS:**

Petitioner No. 1 & 2 were appointed as Medical Officers on 30th April 1994 by Government of U.P., whereas Petitioner No. 3 was appointed as Medical Officer on 31st December 1996. After their appointment, they became members of Provincial Medical Health Service in the existing state of U.P. and after reorganization of this State under U.P. Reorganization Act, 2000, they have become members of Provincial Medical Health Service of successor state of Uttaranchal. After their appointment, Petitioner No. 1 & 2 were posted in the remote hill areas of Kumaon Division in existing State of U.P. Further details, in this regard, are not required to be mentioned. Suffice it to state, that Petitioners were posted in various areas now within the State, of Uttaranchal including Bhowali (Nainital), Chaukhutia (Almora), Bailparao (Nainital), Phutkuan (Nainital). It is the case of the Petitioners that prior to 9th December 2002, Director General, Medical Health & Family Welfare, Uttaranchal, Dehradun followed the policy of giving marks to In-Service candidates for each year of service rendered by the candidate. This was as per the policy framed by State of U.P., which was applied to State of Uttaranchal under the provisions of State Reorganization Act till 9th December 2002, when Respondent No. 2-Direcotr General formulated the policy for State of Uttaranchal in the matter of payment of Non-Practicing

Allowance. Under the U.P. Policy, every In-Service candidate was eligible to be nominated subject to his putting in 5 years service and for each year of service, the candidate was given one mark. In cases, where the In-Service candidates had worked in rural areas (plain), they were giving one additional point called as bonus mark. That those In-Service candidates, who had worked in hill areas were given two bonus points. On 9th December 2002, a Government Order was issued by State of Uttaranchal, which provided for payment of Non-Practicing Allowance to In-Service doctors, for which, rural areas came to be divided between inaccessible and most inaccessible hill areas. Therefore, a doctor in most inaccessible hill area would get more allowance vis-à-vis a doctor working in the hill area, which is inaccessible. On 11th June 2003, the Director General (Respondent No. 2) issued a Circular, inviting applications from all In-service doctors for admission in Post Graduate Diploma Course in Government Medical Colleges in the State of U.P. According to the Circular, only those Government doctors, who had not completed 45 years of age and who had completed 5 years of regular Government service in most inaccessible areas / inaccessible areas of the State, were eligible to apply for admission. This Circular dtd 11th June 2003 is challenged as arbitrary, irrational and violative of Article 14 of the Constitution. Pursuant to the Circular dated 11th June 2003, a letter was addressed on 31st July 2003 by Respondent No. 1 to the Principal Secretary, Medical Health & Family Welfare, Government of U.P., Lucknow forwarding names of 16 In-Service candidates nominated for Post Graduate Diploma Courses. This letter / Government Order dated 31st July 2003 has been challenged.

3. ARGUMENTS:

Mr. Manoj Tiwari, learned Counsel appearing on behalf of the Petitioners contended that prior to 9th December 2002, there was a policy to give marks to In-Service candidates, who were eligible to be nominated for the above Course. He argued that the criteria of eligibility was 5 years. That for each year of service, the In-Service

candidate was given one mark and he as given bonus marks, if he had rendered service in rural (plain) area and in the rural hill area. It was argued that U.P. Policy of giving marks was rational and fair because it covered each and every In-Service candidate. Mr. Tiwari pointed out that the Circular issued by Respondent No. 2 on 11th June 2003, however, was arbitrary and irrational because it has excluded weightage to all those In-Service candidates, who have worked for 5 years or more in the rural areas, which may not be most inaccessible/inaccessible areas. He submitted that large number of In-Service candidates have been left out from the zone of consideration by virtue of the Circular dated 11th June 2003. It was argued that on 9th December 2002 a Government Order was issued for a different subject, namely, payment of Non-Practicing Allowance to be paid to the members working in most inaccessible areas / inaccessible areas and for that purpose, certain areas were demarcated as most-inaccessible / inaccessible. It was pointed out that without any application of mind, Respondent No. 2 bodily lifted the criteria for payment of Non-Practicing Allowance in the Government order dated 9th December 2002 and applied that criteria to the mode of selection/nomination to the Post Graduate Diploma Course Admission and consequently, large number of doctors have been kept out from the zone of selection. It was argued that till 9th November 2002, the U.P. Policy was in force in the State of Uttaranchal and it should have continued under the provisions of U.P. State Reorganization act, 2002 because under the U.P. Policy, marks were given rationally and they covered each and every In-Service candidate. Consequently, the Petitioner has challenged the Circular dated 11th June 2003 read with Government Order dted 31st July 2003 as irrational, unreasonable, arbitrary and violative of Article 14 of the Constitution of India.

Mr. K.P. Upadhyaya, learned Standing Counsel for the State, contended that the Circular dated 11th June 2003 was issued by Respondent No. 2 as In-Service candidates were reluctant to serve as doctors in most inaccessible areas / inaccessible areas. He argued that several In-Service doctors were reluctant to work in such areas and

therefore, the Circular dated 11th June 2003 has been correctly and validly issued by Respondent No. 2. In support of his arguments, he has relied upon a recent judgment of this High Court in the case of Dr. Rajeev Singh Pal V/s State of Uttaranchal & others decided on 16th September 2003 vide Writ Petition No. 449 (S/B) 2003, upholding the criteria of selection / nomination in Post Graduate Diploma Courses. On being questioned by the Court, Mr. Upadhyaya, on instructions, stated that under the impugned system of giving of marks, approximately 400 In-Service candidates are ruled out from the zone of consideration. He, however, contended that the Policy was fair because nomination to the said Course was an incentive for the Government doctors, who have worked in most inaccessible / inaccessible areas of the State.

Mr. Paresh Tripathi, appearing for some of the selected candidates supported the Circular dated 11th June 2003 on the ground that the Circular gave an incentive to In-Service candidates to work in most inaccessible / inaccessible areas and therefore, no interference is called for under Article 226 of the Constitution.

4. At this point, we would also like to mention the arguments advanced by Mr. Tiwari on behalf of the Petitioner-Dr. Kamlesh Chandra Bhatt, Petitioner in Writ Petition No. 441 of 2003. Dr. Bhatt was appointed as a Medical Officer on substantive basis through Public Service Commission on 9th May 1991. He had served from 1991 at various places, namely Dwarahat (Almora), Mainajhundi (Udham Singh Nagar), Bailparao (Nainital) etc. It was argued that Dr. Bhatt had served in rural as well as hill areas from 9th May 1991. It was argued that Dr. Bhatt completed 45 years on 25th May 2002, whereas the Circular inviting applications was issued on 11th June 2003 and since, Dr. Bhatt had completed 45 years, he was ineligible, but, he was entitled to relaxation in the matter of age-bar because he was, earlier, selected for Post Graduate Diploma Course in the academic year 1998-99 in U.P. However, he could not join that

Course as his wife was ailing. He, therefore, submitted that by Writ Petition No. 441 of 2003, Dr. Bhatt has sought relaxation.

5. ISSUE:

The point for determination in this petition is whether the Circular dated 11th June 2003 issued by Respondent No. 2 was irrational, unreasonable, arbitrary and violative of Petitioner's fundamental rights under Article 14 of the Constitution.

6. ANSWER:

For reasons mentioned hereinbelow, we are of the view that the Circular issued on 11th June 2003 by Respondent No. 2 was unreasonable, arbitrary, irrational and bad in law. However, our judgment will apply prospectively for the reasons give hereinafter.

7. REASONS:

State of Uttaranchal came into existence on 9th November 2000. Under Section 71 of U.P. Reorganization Act, 2000, facilities in U.P. Institutions were to continue even after 9th November 2000. These facilities were applicable to the people of State of Uttaranchal. It is, for this reason, that the U.P. Policy of allocation of marks continued to apply to this State up to 9th December 2002. On that day, State of Uttaranchal issued a Government Order in the matter of payment of Non-Practicing Allowance to the Government doctors. For that purpose, the policy provided that Government doctors working in most inaccessible areas / inaccessible areas, alone, were entitled to Non-Practicing Allowance. Under that policy, Government doctors in rural areas (plain) were not entitled to Non-Practicing Allowance. That criteria was bodily lifted and applied vide Circular dated 11th June 2003 in the matter of selection/nomination to Post Graduate Diploma Medical Courses conducted by Medical Colleges in U.P. Consequently, only those In-Service candidates, who had worked in most inaccessible / inaccessible areas, alone, were entitled to be nominated leaving out large number of Government doctors, who

have rendered service in rural areas including hilly areas and plain areas. The State of Uttaranchal is essentially a hilly area. There are rural areas, which are hilly, but accessible and there are areas, which are hilly and inaccessible / most inaccessible. The Respondent No. 2 was certainly entitled to give more weightage to the Government doctors working in most inaccessible areas / inaccessible areas vis-à-vis Government doctors working in plains / accessible hilly areas, but it was not pen to Respondent No. 2 not to give any weightage (marks) to the Government doctors working in plains / hilly accessible areas. In order to know as to how many doctors were kept out from being given marks (weightage), we had adjourned the matter. We were informed by the learned Standing Counsel appearing for the Government that approximately 542 In-Services doctors have been kept out from the zone of consideration. That no weightage was given to the Government doctors who have worked in plains / accessible hilly areas. There is one more aspect, which needs to be mentioned. Before allocating marks (weightage) for the purposes of nomination, Respondent No. 2 was required to identify areas in which the Government doctors had worked during 5 or more years. In this case, large number of areas like the plain areas of Pithoragarh and Hardwar have been kept out a consideration. In the case of doctor Rajeev Singh Pal (supra), it was argued on behalf of the petitioners, that the Government Policy of nominating In-Service candidates for Post Graduate Diploma Course was arbitrary and bad in law because under the Circular dated 11th June 2003, the Government had prescribed the eligibility criteria of 5 years, which ruled out written examination and merit. In that case, it was argued that under the regulations framed by Medical Council of India, the State was required to conduct a common entrance examination. It was argued that by virtue of the Circular dated 11th June 2003, common entrance examination has been ruled out and, therefore, the Circular was bad in law and contrary to the judgment of the Apex Court in the case of State of M.P. V/s Gopal D. Tirthani reported in 2003(5) SCC 473. We have rejected that challenge for the reason given in the said judgment. In our view,

the judgment of this Court in the case of Dr. Rajeev Singh Pal V/s State of Uttarakhand (supra) has no application to the facts of this case. There is a difference between framing of policy by the Government and Application of that policy by giving of marks (weightage). The policy is of the Government. Giving of weightage is the work of the Director General, Medical Health & Family Welfare, Uttarakhand (Respondent No. 2). In this case, we are concerned not with the validity of Policy. In fact, there is no prayer for setting aside the Circular dated 11th June 2003. In this case, we are concerned with application of that policy. In this case, we are concerned with Respondent No.2 – Director General, not giving any marks to a large number of Government doctors, who have worked in rural areas including hilly accessible areas. Therefore, the judgment in Dr. Rajeev Singh Pal's case will not apply to the facts of the present case. In the present case, by not giving any weightage to more than 400 doctors, the nomination of 16 In-Service candidates has become tainted with the vice of arbitrariness and unreasonableness. However, the matter has come before the Court at a belated stage. 16 candidates have been selected way back in July / August 2003. Their Course is about to start. Further, in the case of Dr. Bipin Pant V/s State of U.P. (Writ Petition No. 1620 of 2002), the earlier Bench of this Court vide interim order had directed the Respondent No. 2, herein, to nominate 4 petitioners to Post Graduate Diploma Course, which has been done. That interim order has been passed as far back as 20th December 2002 and, therefore, it is not possible for us to disturb the statusquo as of today.

8. In the circumstances, we direct the Respondent No. 2 – Director General of Medical Health & Family Welfare, Uttarakhand to evolve, in future, a New System for Allocating Marks (weightage), whereby, all In-Service Government doctors would fall within the zone of consideration. In our view, the U.P. Policy was quite reasonable because it gave weightage on comparative basis to each and every Government doctor. Respondent No. 2 is concerned with giving

marks (weightage). Nothing prevents Respondent No. 2 from giving more marks to the doctors, who have worked in most inaccessible / inaccessible areas vis-à-vis others, who have worked in rural areas / accessible hilly areas. In these Petitions, we are concerned with academic year 2003-04. In facts and circumstances of this case, our judgment will not apply to the present academic year 2003-04, but it will apply in future. We clarify that this Order will not prevent Respondent No. 2 from framing any other appropriate System for Allocating Marks in future on any reasonable basis without ruling out any In-Service candidate.

9. Before concluding, we may point out that in Writ Petition No. 441 of 2003 Dr. Kamlesh Chandra Bhatt has sought relaxation regarding the age-bar. We do not find any reason to interfere under Article 226 of the Constitution. Under the Circular dated 11th June 2003, the Government has rightly prescribed the age-bar. The criteria fixing the age of 45 is not under challenge. Petitioner seeks relaxation on the ground that he was selected for the said Course in the year 1998-99 in U.P. Dr. Bhatt could not join the Course as his wife was ailing. However, that circumstance, after all these years and particularly after 9th November 2000, cannot be the ground for this Court to direct Respondent No. 2 to nominate Dr. Bhatt for the said Course. Hence, the Writ Petition No. 441 of 2003 is dismissed with no order as to costs.

Subject to above, all the three Writ Petitions stand disposed of with no order as to costs.

(Rajesh Tandon, J.)

(S.H. Kapadia, C.J.)

Gurpreet
(P.A.)